



August 10, 2018

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: Notice of Ex Parte Communication, MB Docket Nos. 17-317, 17-105

Dear Ms. Dortch:

On Wednesday, August 8, 2018, Erin Dozier, Emmy Parsons and the undersigned of the National Association of Broadcasters (NAB) spoke by telephone with Holly Saurer, Associate Chief of the Media Bureau, regarding the above-captioned proceeding.

The call concerned an email sent to various parties in the above-referenced proceeding. In seeking clarification on the Media Bureau's position, NAB reiterated its arguments made throughout this proceeding.¹ In particular, NAB focused on the most obvious way to make the election process fair, efficient and consistent with existing Commission policy; namely, by having broadcasters make their elections in their public file. Any other proposed solution will lead to unnecessary errors, contested elections, and attempts by some cable operators to play "gotcha" and carry stations for free, while charging consumers to access those stations through their systems.

There is no better way to modernize these rules than by requiring that broadcasters continue to place the elections in their public inspection files and eliminating the need to send copies of the elections by certified mail to all multichannel video programming distributors (MVPDs) in their designated market area. Doing so will (1) satisfy the statutory obligation that broadcasters "make an election,"² (2) fulfill the additional FCC-imposed "notice"

¹ See, e.g., Comments of the National Association of Broadcasters, MB Docket Nos. 13-317, 17-105 (Feb. 15, 2018).

² "The regulations . . . shall require that television stations . . . *make an election* between the right to grant retransmission consent under this subsection and the right to signal carriage under section 614." 47 U.S.C. § 325(b)(3)(B) (emphasis added).

requirement,³ and (3) eliminate the uncertainty in the current process that leads to the FCC serving in an adjudicatory role.⁴

As the Commission progresses with modernizing its rules – including the likely adoption of cable-fueled proposals in this docket that would allow MVPDs to provide many required notices to their customers by email or, in some cases, “via website posting”⁵ – it must also take advantage of the online world to reduce the unnecessary burdens it places on broadcasters. In most other contexts, the Commission has recognized the great value in online postings.⁶ The retransmission consent/must-carry regime is no different. NAB thus strongly encourages the Commission to adopt its proposal to permit broadcasters to satisfy the FCC’s notice requirement by placing the elections in their electronic public inspection files.

³ “We propose to require each station to place a notarized copy of its election statement in its public file *and* to send a copy to every cable system within the station’s market.” *Implementation of the Cable Television Consumer Protection and Competition Act of 1992 Broadcast Signal Carriage Issues*, Notice of Proposed Rulemaking, 7 FCC Rcd 8055, 8066 (1992) (emphasis added); see also “Most commenters agree with our proposal to require television broadcasters to place copies of their election statements in their public files. There was also general agreement that broadcasters should send each cable operator in the station’s market a copy of the election statement applicable to that particular cable operator.” *Implementation of the Cable Television Consumer Protection and Competition Act of 1992 Broadcast Signal Carriage Issues*, Report and Order, 8 FCC Rcd 2965, 3003 (1993).

⁴ See *In the Matter of Minority Television Project, Inc. Licensee of Noncommercial Television Station KMTP, Channel *32, San Francisco, California v. DISH Network L.L.C.*, Memorandum Opinion and Order, CSR-8946-M, MB Docket NO. 17-313, at ¶¶3-4 (rel. Jan. 23, 2018) (despite both parties agreeing that the notice was received and otherwise conformed to the applicable rules, the Commission was still asked to determine whether the notice was proper because the broadcaster failed to send the election notice via certified mail. The Commission concluded notice was not proper because it was not sent via certified mail and that DISH did not need to honor the election).

⁵ See *Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative*, MB Docket Nos. 17-317, 17-105, FCC 17-168, at ¶¶ 6-24 (rel. Dec. 14, 2017).

⁶ *Amendment of Section 73.1216 of the Commission’s Rules Related to Broadcast Licensee-Conducted Contests*, Report and Order, 30 FCC Rcd 10468 (2015); *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 (2012); *Expansion of Online Public File Obligations To Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Reports and Order, 31 FCC Rcd 526 (2016).

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Rick Kaplan', with a long horizontal flourish extending to the right.

Rick Kaplan
General Counsel and Executive Vice President,
Legal and Regulatory Affairs
National Association of Broadcasters

cc: Holly Saurer